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Supreme Court, U.S.
FILED

00-161 MAY 25 2000

OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

WANDA NEGRON-RIVERA,

PETITIONER,

V.

MADERAS TRATADAS INC. (MTI),

RESPONDENT.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals for the First Circuit

PETITION FOR A WRIT OF CERTIORARI

ERICK MORALES, ESQ.
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Counsel for Petitioner

64 pp

QUESTION PRESENTED FOR REVIEW

1. Whether the U.S. Court of Appeals for the First Circuit erred by reversing the jury's verdict in favor or Petitioner on grounds of insufficiency of evidence, violating Petitioner's right to jury trial under the 7th Amendment to the Constitution of the United States.

LIST OF ALL PARTIES

Wanda Negron-Rivera	Plaintiff/Petitioner
Maderas Tratadas Inc.	Defendant/Respondent
Angel L. Rivera-Claudio	Defendant in Principal Action

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OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the First Circuit (case no. 97-1872) is not yet reported. The opinion of the U.S. appellate court overturned the verdict rendered by the jury in the United States District Court for the Puerto Rico District (civil case no. 93-1843).

STATEMENT OF JURISDICTION

The United States Court of Appeals for the First Circuit issued an opinion in this case on February 25, 2000, overturning a jury verdict in favor of Petitioner. The jurisdiction of this Court is invoked under 28 U.S.C.A. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Seventh Amendment to the U.S. Constitution provides in relevant part: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

STATEMENT OF THE CASE

Petitioner Wanda Negron-Rivera began working as a cashier with Respondent MTI in February 28th, 1990. In May 1990, Petitioner was appointed Head Cashier. In August 16, 1990, four months later, the Petitioner went out on vacation, and Petitioner's supervisor took over day-to-day

responsibilities.

During Petitioner's tenure as Head Cashier, internal control of cash operations at Respondent MTI included daily reconciliations of invoices and cash collected, conducted by Petitioner's Supervisor and other Accounting personnel. During the period of May through August 16 1990, daily reconciliation showed no cash shortages. Internal control procedures were functioning flawlessly. Internal controls in the Cash Receipt's area involved the matching of a four-sheet invoice that insured the Company that any discrepancies would be immediately detected.

On August 17th, 1990, Petitioner's supervisor found a bundle of invoices that allegedly was not included in previous months' daily cashier's operations. This situation was informed to MTI internal auditors, which conducted a review of cashier transactions from May 1990 up to the moment the Petitioner went out on vacation, and which allegedly revealed that more than $50,000 had gone missing between that period, despite Petitioner Supervisor's testimony indicating that she had performed her daily reconciliations in strict adherence to company procedures and internal controls. Respondent MTI never explained why the alleged misappropriations went undetected since May 1990, having a matching invoice system that promptly detects imbalances between daily sales, dispatching and cash receipts.

On August 21,1990, MTI personnel promptly reported to the police the embezzlement of company funds. A claim for embezzlement was filed with Respondent's

insurance company, eventually obtaining a refund of $50,000.

On August 22, 1990, Petitioner returned to work. On that date, a police investigator was visiting the premises in response to MTI's complaint. Respondent MTI's President urged him to search Petitioner's purse for missing monies. The police investigator refused to conduct the search since there was no probable cause to do so. Subsequently, 116 counts of illegal appropriation were filed against Petitioner. Probable cause to prosecute was found, based upon the allegations provided by MTI's personnel, and Petitioner was arrested and incarcerated. Respondent MTI offered Petitioner to drop criminal charges against her in exchange for Petitioner's agreement not to sue Respondent. At trial, the validity of said agreement was disputed for lack of consent of Petitioner.

A. The Trial

On June 1993, Petitioner sued Respondent MTI and police officer Angel Rivera-Claudio, based upon the tort of malicious prosecution and constitutional violations pursuant 42 U.S.C. §1983. On March 14, 1997, District Court denied Respondent's motion for summary judgment.

The trial commenced on March 20, 1997, and after Petitioner's case in chief, both defendants moved for judgment as a mater of law pursuant to Fed. R. Civ. P 50(a). The district court dismissed federal claim against Rivera-Claudio, but denied Respondents MTI motion to dismiss the state law malicious prosecution claim. MTI's motion for reconsideration was likewise denied, as was an additional

judgment as a matter of law following the presentation of MTI's case in chief. On April 16, 1997, the jury rendered a verdict in favor of Petitioner in the amount of $500,000 and against Respondent MTI. Once again, Respondent MTI filed yet another motion for judgment as a matter of law and to set aside the jury verdict, which was denied.

B. Sufficiency, Weight and Credibility of Evidence

In reaching its verdict, the jury, by preponderance of the evidence, reached the conclusion that there was enough proof of instigation to find in favor of Petitioner, evidenced by Respondent MTI (1) centering the internal investigation solely in the period in which the Petitioner worked as Head Cashier,(2) jumping into the conclusion of Petitioner's misbehavior despite other personnel close involvement in cashier operations (3) pointing Petitioner as the culprit of the illegal appropriations from the very first day of the police investigation by urging the police officer to search the Petitioner's purse, and (4) by offering testimony at the initial criminal proceedings, implicating Petitioner in the alleged embezzlement of Company funds.

In denying the Respondent's motion for judgment as a matter of law, the trial court reasoned that it could not rule in favor of Respondent MTI without entering into matters involving credibility, since there was ample testimony on both sides of the issue, and the credibility had to be adjudicated by the jury. Further, the district court resolved that the evidence in the case was sufficient in order to have the jury determine the issues of the cause of action. The Respondent MTI appealed the verdict to the United States

Court of Appeals for the First Circuit.

I. THE UNITED STATES COURT OF APPEALS VIOLATED THE PETITIONER'S RIGHT TO JURY TRIAL UNDER THE 7TH AMENDMENT BY OVERTURNING THE JURY'S VERDICT IN FAVOR OF PETITIONER BY "RESTATING" THE FACTS OF THE CASE UNDER THE DOCTRINE OF "INSUFFICIENCY OF THE EVIDENCE".

The Seventh Amendment to the United States Constitution applies to the appellate powers of the United States in all common law cases, coming up from inferior federal courts. Justices v. Murray, 76 U.S. 278 (1870). Appellate review in federal courts is limited ultimately by this amendment. Lumbermen's Mut. Cas. Co. v. Elbert, 348 U.S. 48 (1954).

Neither the Supreme Court nor court of appeals can redetermine facts found by the jury. Atlantic & Gulf Stevedores, Inc. v. Ellerman Lines, Limited, 369 U.S. 355 (1962). A United States court of appeals has no jurisdiction to re-examine facts tried by a jury. Parsons v. Bedford, 28 U.S. 433 (1830). For example, if a jury finds defendant negligent and the appellate court decides that the clear weight of the evidence shows defendant to be free from negligence, it has reexamined the jury's fact determination. C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 2819, p. 203 (2d ed.1992).

In this instant case, the court of appeals improperly concluded that there was not sufficient evidence to support

the jury verdict rendered in favor of the Petitioner. In weighing the sufficiency of the evidence submitted at trial to support the jury findings of the elements of instigation of malicious prosecution, the appellate court not only re-examined the facts, but actually "redetermined" some of them.

The appellate court, in support of their findings that there was not sufficient evidence regarding the instigation element, pointed out that Petitioner's name was not offered as a suspect to the police (page 3 of the opinion). However, the very first day that the police investigator visited Respondent's premises, MTI President demanded the investigator to search Petitioner's purse for missing monies. Clearly, this shows that Respondent was letting the investigator know, from the very beginning, that the Petitioner was the culprit of the alleged misappropriation of funds. These actions by Respondent was "...more than merely reporting the commission of an offense to the police"; It was the actual instigation.

Appellate courts may not reweigh evidence or set aside a jury's verdict merely because appellate judges could have drawn different inferences or conclusions from evidence, or feel that other results might be more reasonable. Wood v. Diamond M. Drilling Co., 691 F.2d 1165 (5th Cir. 1982), certiorari denied 460 U.S. 1069.

The Seventh Amendment forbids appellate judges to sit as postrial assessors, and denies them power to vacate awards because they might, as fact triers, have decided differently. Dunn v. Sears Roebuck & Co., 639 F.2d 1171 (5th Cir. 1981),

corrected 645 F.2d 511.

II. A CONFLICT EXISTS AMONG UNITED STATES CIRCUIT COURT OF APPEALS REGARDING THE STANDARD OF APPELLATE REVIEW TO BE APPLIED CONCERNING THE SUFFICIENCY OF THE EVIDENCE UNDER THE 7TH AMENDMENT'S RIGHT TO JURY TRIAL

Unlike the Court of Appeals for the First Circuit, the review by the Court of Appeals as to the sufficiency of the evidence is exceedingly narrow because of the requirements of the right to jury trial preserved by the Seventh Amendment. See Granberry v. O'Barr, 866 F.2d 112 (5th Cir. 1988). The Second Circuit uses a standard of review of "seriously erroneous" when dealing with jury verdicts and requests for new trial. Binder v. Long Island Lighting Company, 57 F.3d 193 (2nd Cir. 1995). On the other hand, the Eleventh Circuit's standard of review is a "stringent" test, when weighing the sufficiency of evidence to support a jury verdict . Insurance Co. of North America v. Valente, 933 F.2d 921 (11th Cir. 1991). The Third Circuit uses a "miscarriage of justice" review. Williamson v. Consolidated Rail Corp., 926 F.2d 1344 (3rd Cir. 1991).

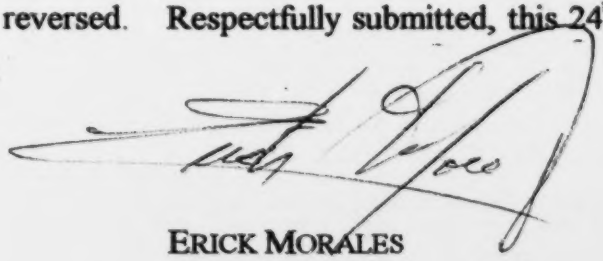
The Ninth Circuit refuses to reweigh the evidence at the appellate level when there is an "evidentiary basis" for the jury's verdict, indicating that "the jury is free to discard or disbelieve whatever facts are inconsistent with its conclusion. Bount Bros. v. Reliance Insurance Co., 370 F.2d

733 (9th Cir. 1967), certiorari denied 387 U.S. 907. Finally, the Tenth Circuit is reluctant to overturn a jury's verdict unless "there is a complete absence of probative facts". Denver and Rio Grande Western Railroad Company v. Conley, 293 F.2d 612 (10th Cir. 1961).

Because there exists different standards of review among the different circuits concerning the sufficiency of the evidence, it is imperative that the Supreme Court enunciate the proper uniform standard of review for all United States appellate courts.

CONCLUSION

For the above-stated reasons the petition for a writ of certiorari should be granted and the judgment of the United States Court of Appeals for the First Circuit should be summarily reversed. Respectfully submitted, this 24th day of May 2000.



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United States Court of Appeals
For the First Circuit

No.97-1872

WANDA NEGRON-RIVERA

Plaintiff, Appellee,

v.

ANGEL L. RIVERA CLAUDIO, ET AL.

Defendants, Appellees,

MADERAS TRATADAS, INC.,

Defendant, Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Carmen Consuelo Cerezo, U.S. District Judge]
[Hon. Jesús A. Castellanos, U.S. Magistrate Judge]

Before

Lynch, Circuit Judge,

Campbell, Senior Circuit Judge,

and O'Toole, * District Judge.

Jeannette M. López deVictoria with whom Pinto –Lugo & Rivera was on brief for appellant.
Erick Morales for appellee.

February 25, 2000

* Of the District of Massachusetts, sitting by designation.

CAMPBELL, Senior Circuit Judge. The district court action from which this appeal is taken followed the filling and subsequent withdrawal by Puerto Rican authorities of a criminal complaint against plaintiff-appelle Wanda Negrón Rivera ("Negrón"). After the charges were with drawn, Negrón sued the police investigator and her employer, defendant-appellant Maderas Tratadas Inc. (MTI), accusing the latter of malicious prosecution under article 1802 of the Civil Code of Puerto Rico. A jury awarded Negrón $500,00 on that claim. On appeal, MTI contends that the district court erred in rejecting its motions for judgment as a matter of law. We agree with MTI that there was insufficient evidence to support the jury's finding of malicious prosecution. Accordingly, we reverse.

I.

BACKGROUND

In February, 1990, Negrón began working as a cashier at MTI. In August of that year, she went on vacation and was temporarily replaced by MTI employee Virginia Fernández. Fernández found a bundle of invoices marked with what appeared to be Negron's initials. Upon tallying the invoices, Fernández discovered that the total amount of the invoices exceeded the amount of cash deposits made to the bank on the previous day. Fernández reported the discrepancy to the director of the electronic data processing department.

MTI conducted an internal audit, which revealed that more than $50,000 had gone missing between May and August, 1990. On August 21,1990, MTI employee Maritza Torres notified the police department that someone was stealing money from the company, and asked the police to investigate. MTI provided the police with documents that resulted from the internal audit. MTI did not name Negrón as a suspect to the police.

MTI's complaint was referral to the Criminal Investigations Corps and was assigned to agent Angel Rivera Claudio for investigation. In the course of his investigation, Rivera Claudio consulted with the district attorney's office, reviewed MTI's internal documents, and interviewed several MTI employees. On August 22,

1990, while visiting MTI, he was told that earlier that day, an imbalance in Negron's cash register has been detected. The president of MTI, Luis Fernández, asked Rivera Claudio to check Negron's purse for evidence relating to the missing monies; Rivera Claudio demurred, stating that he did not have grounds to do so and needed to "get some orientation" with the district attorney.

On September 25, 1990 after consultation with the district attorney, Rivera Claudio filed a criminal complaint 116 counts of illegal appropriation against Negrón. The complaint listed MTI employees as witnesses. On that date, a state court judge found probable cause to arrest Negrón. On March 13, 1991, after a hearing, the court found probable cause to hold Negrón for trial. Meanwhile, Campo & Strattis, an accounting firm, performed an additional investigation of the appropriations, and issued a report stating that MTI had lost more than $50,000.

On June 23, 1992, the criminal charges against Negrón were dismissed , and Negrón stipulated that she would not sue the government or MTI. The validity of that stipulation is in dispute.

On or about June 8, 1992, Negrón filed a complaint in the District Court for the District Court of Puerto Rico against Rivera Claudio alleging

constitutional violations pursuant to 42 U.S.C. ξ 1983, and against MTI alleging malicious prosecution under Puerto Rico law. MTI moved for summary judgment. The district court denied MTI's motion on June 14, 1997, stating only that there were material issues of fact precluding summary disposition.

The trial commenced on March 20, 1997. Among the disputed issues was Negron's assertion of a partial alibi. Negrón contended that she was not working on seven of the 116 days that illegal appropriations were alleged to have occurred. MTI responded that, inter alia, there was evidence that Negrón was working on those days, and that in any event, the remaining 109 charges of illegal appropriation were unaffected by her purported alibi. After Negrón presented her case in chief , both defendants moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(a). The district court allowed Rivera Claudio's motion, dismissing the federal claims against him, but denied MTI's motion to dismiss the state law malicious prosecution claim. MTI's motion for reconsideration was likewise denied, as was an additional motion for judgment as a matter of law following the presentation of MTI's case in chief. On April 16, 1997, the jury rendered a verdict in the amount $500,000 against MTI. On May 13, 1997, MTI filed yet

another motion for judgment as a matter of law and to set aside the jury verdict, which was denied . MTI appeals.

II.

DISCUSSION

We review the court's denial of MTI's motion for judgment as a matter of law de novo, but we examine the evidence and inferences there from in the light most hospitable to Negrón, and may reverse the denial of the motion only if reasonable persons could not have reached the conclusions that the jury embraced . See Sánchez v. Puerto Rico Oil Co. , 37 F. 3d 712, 716 (1st Cir. 1994).

Following the district court's dismissal of the section 1983 action against Rivera Claudio, the only claim remaining was that for malicious prosecution against MTI. Article 1802 of the Puerto Rico Civil Code requires a plaintiff to prove (1) the criminal action was initiated and instigate by the defendant; (2) the criminal action terminated in favor of the plaintiff ; (3) the defendant initiated the action with malice and without probable cause; and (4) as a consequence, the plaintiff suffered damages. See Rivera- Marcano v. Normeat Royal Dane Quality, 998 F. 2d 34, 37 (1st Cir. 1993). " The third element may also be described as two separate elements because plaintiff must show both that the defendant acted with malice and that he acted without

probable cause." Id. MTI argues, inter alia, that the evidence on each of these elements was insufficient to support a verdict for Negrón. Because the evidence was insufficient to establish even the first element, we go no further. See id.

Under Puerto Rico law, a plaintiff must show that the defendant actively instigated the prosecution, and "that it was not the authorities who on their own evaluation of the events decided to prosecute the plaintiff." Raldiris v. Levitt & Sons of Puerto Rico, Inc., 103 D.P.R. 778, 781 (1995). In general, merely reporting the commission of an offense to the police is insufficient to impose liability. See id. The Puerto Rico Supreme Court explained:

> [t] o furnish information to a prosecuting attorney does not by itself constitute an instigation, since generally in those cases the efficient cause of the initiation of the prosecution has been the initiative and decision of the prosecuting attorney, in the exercise of this discretion, after having carried out the corresponding investigation.

Jiménez v. Sánchez, 76 P.R.R. 347, 351 (1954) ; see also Rivera-Marcano, 998 F.2d at 38; Vince v. Posadas de Puerto Rico , S.A., 683 F. Supp. 312, 317 (D.P.R. 1988)[1]

Here, Negrón adduced insufficient evidence from which the jury could reasonably have determined that, MTI instigated her prosecution or, indeed , that the decision to prosecute was made by anyone other than the government. The record indicate that the Puerto Rico police filed the criminal complaint against Negrón after conducting their own investigation , reviewing the results, and consulting with the district attorney's office. MTI's role appears from the record to have been limited to reporting the illegal appropriation to the police , cooperating with the ensuing investigation, and providing testimony. These activities would not without more, constitute the "initiation" or "instigation" of a criminal action within the meaning of Article 1802. See note 1, supra. To impose liability upon MTI in these circumstances would undermine the "social interest in

[1] It is conceivable, in a different case, that a defendant could "instigate" and otherwise independent prosecution by knowingly misleading the authorities through the provision of incorrect or incomplete information. See Rivera-Marcano, 998 F.2d at 38, and cases cited. Here however, the record contains nothing to indicate that MTI knowingly furnished false information or deliberately withheld material information in order to indirectly instigate Negron's prosecution.

having a citizen inform the authorities about the commission of potential crimes" Vince, 683 F. Supp. at 317 (citing Raldiris , 103 D.P.R. at 781).

To support her argument that the driving force behind her prosecution was MTI, not the police nor the district attorney, Negrón points to the facts that Maritza Torres provided information to the police, that Rivera Claudio's answer to the complaint denied knowledge or information concerning Negron's specific job duties at MTI; and that Negrón testified that she did not work on seven of the days on which illegal appropriation occurred.[2] Even when considered in the light most favorable to Negrón, however ,the foregoing do not by themselves suffice to establish that MTI actively instigated the prosecution of Negrón. See Raldiris, 103 D.P.R. at 781.

Negrón additionally contends that the fact that MTI's president, Luis Fernández, asked Agent Rivera Claudio to check Negron's purse when monies had been discovered missing on that day "corroborates the inference that MTI instigated the criminal prosecution." As Rivera Claudio there after declined to search Negro's

[2] As evidence at trial that Negrón in fact worked on the days in question, MTI presented punched time cards and canceled pay checks for those dates that bore her initials or signature.

purse , however, we fail to see that this evidence support Negron's suggestion that the police blindly did MTI's bidding. Rather, Rivera Claudio's refusal suggests that the agent was exercising his own initiative and discretion while conducting the criminal investigations, and that MTI's role in the subsequent decision of the district attorney and police to prosecute was subordinate.

Because Negron's failure to adduce sufficient evidence that MTI initiated and instigated the criminal action defeats her malicious prosecution claim, see Rivera- Marcano, 98 F.2d at 37, we need not and do not reach the other issues presented on appeal .

Reversed.

United States of District Court
District of Puerto Rico

WANDA NEGRON RIVERA
Plaintiff
v.
MADERAS TRATADAS INC.
Defendant

JUDGMENT IN A CIVIL CASE
Civil Case 93- 1843 (CC)

Jury Verdict: This Action came before the Court for a trial by jury. The issues have been tried and the jury has rendered is verdict on April 16, 1997.

IT IS ORDERED AND ADJUDGED that plaintiff **Wanda Negrón- Rivera** recover from defendant **Maderas Tratadas, Inc.**, the sum of **FIVE HUNDRED THOUSAND DOLLARS ($500,000.00)** for damages.

At San Juan, Puerto Rico this 17th day of April, 1997.

FRANCES RIOS DE MORAN

Clerk of Court

(By) Frieda Ramírez

Deputy Clerk

s/c: Erick Morales
Jaime Morales Morales

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MINUTES OF PROCEEDINGS
April 10, 1997

BEFORE HON. CARMEN CONSUELO CEREZO
Chief, United States District Judge

WANDA NEGRON-RIVERA

Plaintiff

vs.
CIVIL 93-1843CCC

ANGEL RIVERA-CLAUDIO, et al

Defendants

By order of the Court, having considered the oral motion made by Maderas Tratadas, Inc. under rule 50, and having reviewed the applicable law and jurisprudence, said Motion is DENIED. Parties to be notified.

Secretary

S/c: 4-15- 97
E. Morales
J. Morales Morales

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WANDA NEGRON-RIVERA
Plaintiff

Vs CIVIL 93-1843CC

ANGEL RIVERA-CLAUDIO, POLICE AGENT;
JOHN DOE, DIRECTOR, CRIMINAL INVESTIGATIONS CORPS, BAYAMON;
JOHN ROE, DIRECTOR,CRIMINAL INVESTIGATIONS CORPS OF PUERTO RICO;
MADERAS TRATADAS, INC.
Defendants

ORDER

Having considered the Motion for Judgment as a Matter of Law and to Set Aside Verdict filed by defendant Maderas Tratadas, inc. **(docket entry 97)**, the same is DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on May 20, 1997.

CARMEN CONSUELO CEREZO
Chief, U.S. District Judge

S/C. J. Morales
E. Morales
5-22-97

E1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WANDA NEGRON RIVERA
Plaintiff

Vs. CIVIL NO. 93- 1843 CC

ANGEL L. RIVERA CLAUDIO,
POLICE AGENT;
JOHN DOE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS, BAYAMON;
JOHN ROE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS OF PUERTO RICO
MADERAS TRATADAS INC.
Defendants

COMPLAINT
(Filed Jun.-8 1993)

Jurisdiction

1.

This action is brought pursuant to 42 U.S.C. section 1983. Jurisdiction is based upon 28 U.S.C. section 1331 and 1343 (1), (3), (4) and the aforementioned statutory provision. Plaintiff further invokes the Pendent and Supplemental

Jurisdiction of this Court based upon 28 U.S.C., section 1367 to hear and decide claims arising under state law.

Parties

2.

Plaintiff, Wanda Negrón Rivera, is a resident of Toa Baja, Puerto Rico.

3.

Defendant, Angel L. Rivera Claudio, is and was at all times relevant to this action a police officer with the Criminal Investigation Corps of Puerto Rico (CIC), Fraud Division, stationed in the in the municipality of Bayamón, and acting of the color of state law. He is being sued both in his personal and official capacities.

4.

Defendant, John Doe, and unknown police officer, is and was at all times relevant to this action a police officer and Director and/or supervisor of the Criminal Investigations Corps of the Municipality of Bayamón , supervisor of

codefendant Rivera, And acting under color of state law. He is being sued both in his personal and official capacities.

5.

Defendant, Joe Roe, an unknown police officer , is and was at all times relevant to this action a police officer and Director of the Criminal Investigations Corps of Puerto Rico, supervisor of codefendants Rivera and Doe, acting under color of state law. He is being sued both in his personal and official capacities.

6.

Maderas Tratadas Inc. , is and was at all times relevant to this action a corporation doing business in Puerto Rico, with offices in the municipality of Toa Baja, Puerto Rico . The corporation is being sued both in her private and official capacities.

First Cause of Action

7.

Plaintiff worked as a cashier for codefendant, Maderas Tratadas Inc. From February 28 , 1990 till August 23, 1990.

8.

Plaintiff's duties was to charge for the merchandise sold, process the cash and credit card sales from all costumers, process checks, handle on occasion sales, answer phones, and balance daily the cash register.

9.

Plaintiff worked days from 8:00 AM to 5:00 PM, and was off on Sundays and Tuesdays.

10.

Plaintiff got married on August 17, 1990. Her husband was an employee of codefendant, Maderas Tratadas Inc., and labored as a salesman.

11.

On August 22, 1990, after their honeymoon, Plaintiff and her husband returned to work for codefendant, Maderas Tratadas Inc.

12.

Codefendant, Maderas Tratadas Inc. fired Plaintiff on August 23, 1990.

13.

Codefendant, Maderas Tratadas Inc., fired Plaintiff's husband from his job on August 24,1990.

14.

On or about the 23rd of September, 1990, defendant, Angel L. Rivera Claudio (hereinafter Rivera) went to Plaintiff's home with a summons ordering her appearance, the following day, to the Criminal Investigation Corps' office in Bayamón.

15.

Plaintiff appeared the 24th of September , 1990, at the Criminal Investigations Corps' office, and was subsequently given another citation to appear the 26th of September , 1990 at The Investigation Hearing Room of the San Juan District Court of Puerto Rico. Plaintiff was not told the nature , purpose or reason of said citation.

16.

Plaintiff appeared at the San Juan District Court and was told by the Judge that she was being accused on one hundred and sixteen (116) counts of aggravated illegal appropriation.

17.

The Judge determined probable cause to arrest and bail was set at 2,120.00 dollars.

18.

Plaintiff subsequently was taken to police headquarters, booked, and taken to the female correctional facility in the municipality of Vega Baja.

19.

Plaintiff was incarcerated for approximately 10 hours before she was freed on bail by her mother.

20.

A Preliminary hearing was held and probable cause to accuse was found.

21.

After many continuances, trial was set for June 23, 1992 and charges were dismissed for want of proof.

22.

Plaintiff alleges that she was arrested without probable by defendant, Rivera, who under the facts available did not have an objective good faith belief that plaintiff was guilty of the offense charge. Plaintiff further alleges that such an arrest was in violation of her rights under the 4th Amendment of the United States Constitution., to be free from unreasonable arrest and her right under 14th Amendment of the U.S. Constitution to the process of law. Plaintiff's arrest was made under color of law , article 166 of the Commonwealth of Puerto Rico Penal Court, and under the color of the Authority of defendant, Rivera , as a police officer for the Commonwealth of Puerto Rico.

23.

The arrest of Plaintiff by defendant police officer Rivera was carried out illegally, willfully, wantonly, maliciously, with gross negligence, and without probably cause.

24.

Codefendant , John Doe's, reckless failure to adequately train, supervise, discipline or in any other way control codefendant Rivera in his exercise of his police functions, and his failure to enforce the regulations of the police department is evidence of a reckless lack of cautions regard of the rights of the public, including those of plaintiff's Wanda Negrón Rivera, and exhibits a lack of that degree of care which prudent and reasonable individuals would show in executing the duties of supervisor/director of the Criminal Investigation Corps.

25.

Codefendant, Joe Roe's, reckless failure to adequately train, supervise, discipline or in any other way control codefendant Rivera and Doe in their exercise of their police functions , and his failure to enforce the regulations of the police department is evidence of a reckless lack of cautions regard for the rights of the public, including those of plaintiffs Wanda Negrón- Rivera, and exhibits a lack of that degree of care which prudent and reasonable individuals

would shown in executing the duties of supervisor/director of the criminal investigation Corps.

26.

As a direct and proximate result of defendants' action Plaintiff suffered and continuous to suffer serious mental anguish and emotional distress, and physical pain and suffering, some or all of which may be permanent.

27.

As a direct and proximate result of defendant's actions , Plaintiff's marriage was affected , culminating in divorce, and affecting Plaintiff's emotional state of mind, suffering from mental anguish, and emotional distress.

28.

As a direct and proximate result of defendants' action, Plaintiff suffering "Hypertension" occasioning the stillbirth of her child, affecting Plaintiffs emotional state of mind, suffering from physical pain, mental anguish and emotional distress.

29.

As a direct and proximate result of defendant's action, Plaintiff should not become pregnant due to risk of death either to her or the child, or both, all this affecting Plaintiff's emotional distress.

30.

As a direct result and proximate result of defendants' action, plaintiff was deprived of her rights, privileges and immunities under the Fourth and Fourteenth Amendments to the United States Constitution and the laws of the Commonwealth of Puerto Rico.

Second Cause of Action

31.

Plaintiff hereby realleges paragraphs 1-29 of this complaint as though fully set forth here.

32.

Maderas Tratadas Inc. without justification and probably cause falsely accused Plaintiff 116 counts of illegal appropriation.

33.

That a through investigation of the alleged acts was not carried out by Maderas Tratadas Inc. nor by the codefendants.

34.

Codefendant, Maderas Tratadas Inc.'s action against Plaintiff was intentional , and/or grossly negligent conduct.. In addition, plaintiff suffered humiliation, public ridicule, loss of reputation, and emotional distress as a consequence of being arrested on a criminal charge.

35.

As a consequence of Maderas Tratadas Inc. 's action ,n Plaintiff suffered a stillbirth , occasioning great pain, mental anguish and emotional distress. Additional , Plaintiff, should not be pregnant due to risk of death , either to her or the child, or both, all this causing mental anguish and emotional distress.

36.

the acts and conduct of all defendants alleged in the above state cause of action constitute malicious prosecution, false

arrest, intentional and/or negligent infliction of emotional distress, outrages conduct , invasion of privacy, negligence, gross negligence, and negligent hiring, retention and supervision under the laws and regulations of the Commonwealth of Puerto Rico, and this Court has pendent and supplemental jurisdiction to hear and adjudicate said claims.

WHEREFORE, plaintiffs demand the following relief, jointly and severally against all the defendants:

1.

Compensatory damages for plaintiff, Wanda Negrón-Rivera in the amount of $3,000,000.00 dollars.

2.

Punitive damages for plaintiff, Wanda Negrón-Rivera the amount of $3,000,000.00 dollars.

3.

Special damages for plaintiff, Wanda Negrón- Rivera, in the amount of $28,000.00.

4.

Such other and further relief as this court may deem appropriate, including costs, and reasonable attorney's fees.

A JURY TRIAL IS HEREBY DEMANDED.

Dated this 8th day of June , 1993

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WANDA NEGRON RIVERA
Plaintiff

Vs. CIVIL NO. 93- 1843 CC

ANGEL L. RIVERA CLAUDIO,
POLICE AGENT;
JOHN DOE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS, BAYAMON;
JOHN ROE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS OF PUERTO RICO
MADERAS TRATADAS INC.
Defendants

[p.245]
THE COURT : Your first witness.

MR.MORALES: We call the plaintiff, Wanda Negrón .

May it please the Court?

THE COURT: you may commense.

(The witness is duly sworn.)

Whereupon,

WANDA NEGRON

was called as a witness and after having been duly sworn testified as fallows:

DIRECT EXAMINATION

BY MR. MORALES:

Q Good Afternoon, madam.

A Good afternoon.

Q For purposes of the record please state your name loud and clear.

A Wanda Negron Rivera.

Q Where do you live, madam?

A Toa Baja, Puerto Rico.

Q How long have you been in Toa Baja, Puerto Rico?

A Eleven years.

Q What is your occupation, madam?

A At the present time I am unemployed.

[p.246] Q What is your education, madam?

A Bachelor's Degree in biology and two years of medicine.

Q What is your civil status ?

A Single

Q Madam, on February—by February 28, 1990, where were you working?

A Maderas Tratadas .

Q What position were you working?

A Cashier.

Q What was the date you started working at Maderas Tratadas?

A On February 28, 1990.

Q How is it that you get to work at Maderas Tratadas?

A I was referred there by the Department of Labor.

MR. MORALES: Madam secretary, can I have Exhibit NO. 1 and 2, please? And three.

EXAMINATION CONTINUED

BY MR. MORALES

Q I show you what has been marked as Exhibit No. 1. Do you have it before you, madam?

A Yes.

Q What is that?

A It's a referral by the Department of Labor so I [p.247]could show up at Maderas Tratadas.

Q Was that document given to you at that time, madam?

A Yes.

Q Does it have a date by any chance?

A No.

Q You receive that document at the Labor Department?

A Yes.

MR. MORALES: We move for admittance.

THE COURT: You Referred to it as an exhibit.

MR. MORALES: It is an exhibit already.

EXAMINATION CONTINUED

BY MR. MORALES

Q Look at exhibit No. 2, please.

A Ah-huh.

Q What is it that you have in your hand?

A It is an employment application for MaderasTratadas.

Q Is that your employment application?

A Yes.

Q And does that application tell you what duties you were gong to perform with Maderas Tratadas?

A Yes.

Q And the functions were as cashier?

[p.248] A Yes.

Q Now look at Exhibit No.3 What is Exhibit No. 3, madam?

A It is the employment contract with Maderas Tratadas .

Q It is a probationary period, is that what you call it?

A Correct.

Q What time were you going to be on probationary ? How long was your probationary period?

A Three months.

Q Now, you mentioned that your duties were as cashier? Did you perform any another duties?

A Yes.

Q What where the duties, madam?

A In addition to sales we also had to answer the telephone, process credit application forms and purchases by the municipalities.

Q What were your hours of work, Miss Negron?

A I start at 7:00 a.m. to 4:30 p. m. And finished at 8:00 a.m. to 5:00 p.m.

Q What days did you work for Maderas Tratadas?

A Monday, Wednesday, Thursday, Friday and Saturday.

Q What were your days off?

A Tuesdays.

[p. 249] Q Were you off on Sunday?

A Yes .

Q Was Maderas Tratadas open on Sundays ?

A Not during that time.

Q How long did you work for Maderas Tratadas?

A From February 28, 1990 until August 28, 1990.

Q Who was your immediate supervisor at Maderas Tratadas?

A Mrs. Virginia Frenandez.

Q Did you have any another supervisor?

A The account of the company and Mrs. Maritza Torres.

Q What position did Maritza Torres occupy in the company?

A She was the chief of personnel .

Q How many cashiers were working when you first started working at Maderas Tratadas by February 28, 1990.

A Two.

Q And who were they?

A Mrs. Virginia Fernandez and Mrs. Virginia Diaz.

Q So there were three cashiers when you started work then including yourself?

A I came in the substitute one of them.

Q Which one was this, madam?

A Mrs. Virginia Diaz.

[p.250] Q And what position then did Virginia Diaz occupying after you took her place?

A Credit assistant.

Q So there were only two cashiers, you and Virginia Fernandez.

A Yes.

Q Who substituted you? Strike the question. What were your breaks? Did you have a morning break?

A Just my lunch time.

Q What time did you take your lunch break?

A It was – we rotated.

Q You rotated. Can you please explain me what that means?

A Well, depending on the sales that day the number of customers that we have that day, well, it would depend if I could take it any time between 11:00 a. m. and 1:00 p.m.

Q When you substituted at the cashiers when you took your lunch break who substituted you?

A Yes.

Q Who?

A. Mrs. Virginia Fernandez.

Q Did anybody else substitute you?

A No.

Q Do you Know a person by the name of Alida Medina?

A Yes.

[251] Q Who is she, madam?

A She was the credit officer at that time.

Q And do you know a person by the name Eva Ortíz?

A Yes.

Q Who is she?

A She was the one in charge of accounts receivable of—concerning the municipalities of the island.

Q When you were—you mentioned you were off on Tuesdays. Who substituted you that day?

A If it was not Alida Medina it could have been Mrs. Eva Ortiz.

Q Did Virginia Diaz ever substituted you in any fashion ?

A No. After she left the position of cashier she did not.

Q Now how many salesmen were there when you started working by February 28, 1990 at Maderas Tratadas?

A About seven.

Q Do you remember the names, madam?

A Of some of them I do.

Q Can you please tell the names?

A Israel Cordero, Luis Monge, Angel antibiotic Yeah go, Eliazer Santos, the manager who was Carmelo Santos. I don't remember the others.

Q You mentioned first Ismael Cordero. Who is he ,ma'am?

[p.252] A My ex-husband.

Q When did you meet Ismael Cordero?

A When I started working for the company.

Q Was he a salesman?

A Yes.

Q On what date were you married?

A August 17, 1990.

Q Now, madam, were the salesman who worked for Maderas Tratadas, were they on commissions or on salary or on salary and commissions?

MS. RODRIGUEZ: We have objection as to the relevancy.

THE COURT: What's the relevance?

MR. MORALES: May I approach?

THE COURT: No. Tell me from the there.

MR. MORALES: It's relevant since the invoice has sheets, as I explained in my opening statement, is a pink sheet. And the fact that the salesman is interested—first of all, the salesman brings out the invoice and he's interested in providing that sheet.

THE COURT: Will this be tied to some ultimate conclusion were you're leading?

MR. MORALES: Yes your Honor.

THE COURT: Well overruled.

[p.253}

EXAMINATION CONTINUED

BY MR. MORALES:

Q Now do you know if they earn commissions?

MR. MORALES MORALES: Objection. Lack of foundation.

MR. MORALES: I asked the same question.

MR. MORALES MORALES: We know. We object because he has not set the foundation.

THE COURT: Overruled.

EXAMINATION CONTINUED

BY MR. MORALES:

Q Were they on commissions, madam, that you know of?

A On commission and salary .

Q Now, please explain to the ladies and gentlemen of the jury how a sale was processed by the salesman?

MR. MORALES MORALES: objection, your Honor. We understand that there's no foundation to enter into this line of questioning.

THE COURT: Overruled.

THE WITNESS: The customer would go to the salesman, he would request the material he wanted to purchase. The salesman proceeded to process it through his computer terminal. When the customer completed the purchase the salesman proceeded to deliver to the customer the invoice. The customer would keep the pink colored[p.254] invoice for his records an customer would receive the yellow, the white and the green invoices.

Q What would the customer did afterwards?

A Proceeded to go to the cash register, he would pay for the merchandise, the cashier would keep the white invoice , and then the green and yellow invoices were then given to the customer. The yellow invoice was the customer's guarantee and the green one to be delivered to the security guard.

Q I ask you, madam, you mentioned that the salesman is the one who brings out the invoice. Does he bring it out of a computer terminal?

MR. MORALES MORALES: Objection . Leading.

THE COURT: Well, these are background questions, but try to stay away from leading the witness.

MR. MORALES: Okay.

EXAMINATION CONTINUED

BY MR. MORALES:

Q Now, was the salesman the first person who would register the sales in the computer terminal.

A Correct.

Q Now, where would that register go to?

A To the computation center.

Q And who is in charge of the computation center?

A Mr. Jose Miranda.

[p.255] Q Now, did the salesman, did he have an identification number?

A Yes.

Q Was it registered in the invoice?

A Yes.

Q Okay now, once the client came to you and he gave you—you mentioned you retained the white sheet. What would you do with your white sheet?

A Well, I proceeded to enter into the computer the way bill number. In the computer would be reflected merchandiser that had been bought and the amount of money to be paid. The customer would then give me the money , I would introduce the amount of money I received from the customer. I would then return the rest of the invoices to the

customer, and the money would be put away in the cash register and invoices would be put away in the draw.

Q What would you do eventually with that white sheet?

A Well, we never a balance of the cash register was requested I proceeded to add up all of the invoices using my calculator. I would call the computation center an I would ask them to give me, produce the tally according to the terminal. When they called me they would said so much was sold, and I would check it against my additions and I would say if is was correct or not. Ms. Fernandez would [p. 256] come and count the money. It would be placed inside an envelope, and the way bill with the money would be taken then to be deposited in the bank.

Q Now, madam, you mentioned that there was a balance that was done. How many times did this occur during the day, if you know?

A It would be done about three times a day.

Q Would you do the same exercise that you have explained to the ladies and gentlemen of the jury?

A Correct.

Q Was there any specific time that this was done, madam, the balance?

A Only at 4:30 p.m.

Q So the other ones, they were done at irregular intervals of time, is that what you are saying?

A Correct.

Q Where you quantities always correct on the balance, madam?

A Yes.

Q You mentioned you married Ismael Cordero. When I ask you, did you ask for a vacation period of time to carry out this wedding engagement?

A Yes, I did .

MR.MORALES: Can I see Exhibition No. 4, madam secretary please?

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WANDA NEGRON RIVERA
Plaintiff

Vs. CIVIL NO. 93- 1843 CC

ANGEL L. RIVERA CLAUDIO,
POLICE AGENT;
JOHN DOE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS, BAYAMON;
JOHN ROE, DIRECTOR, CRIMINAL
INVESTIGATION CORPS OF PUERTO RICO
MADERAS TRATADAS INC.
Defendants

[p. 1530]

THE COURT: This is a popular cause of action. It is not favored that is clear. However, at some point in time you have to determine whether it is a cause of action at. All right. And what I'm saying is that the evidence in this case is sufficient, this case is sufficient to compel me as presiding judge not to stop the case here, but to hand it over to the jury for them to determine these issue because this case is not only of someone said, which is that one word in the

complaint , where Ms. Torres appears as complainant. There is much more to it and there is an added ingredient which they would have to take into account . Whether this one employee that Maderas Tratadas was putting forward to give information to the D.A. and to the police officer, the CIC agent was a person who had his hands unclean and was therefore maliciously saying thing against Wanda Negron that brought about these criminal charges. All right. So – and that was allowed by Maderas Tratadas. So this is a matter for the jury, it's not something I can adjudicate one way or another because I would have to make credibility findings.

I would have to say, but Mr. Miranda said this and Torres said that. And the other said that. What you're really asking me to do is adjudicate conflicts in evidence in your favor. That's not the standard for the [p.1531] Rule 50 motion. So your Rule 50 motion is denied. We will take a ten, fifteen minute recess.